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HARNESS, DICKEY & PIERCE, P.L.C.

P.O. BOX 8910

RESTON, VA 20195

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CAITLYN CURTIN

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Appeal No. 2010-010131  
Application 10/733,414  
Technology Center 1700

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Before CHARLES F. WARREN, JEFFREY T. SMITH, and  
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

Applicant appeals to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 14 in the Office Action mailed August 19, 2009 (Office Action). 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2009).

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

We affirm the decision of the Primary Examiner.

Claim 1 illustrates Appellant's invention of a dryer, and is representative of the claims on appeal:

1. A dryer comprising:

a diffuser for allowing air to exit in order to dry a surface of a user's body;

movement means for moving the diffuser over a wide range of angles in order to dry different parts of the surface; and

control means for sending instructions to the movement means in order to control the movement of the movement means over the wide range of angles.

Appellant requests review of the following grounds of rejection advanced on appeal by the Examiner<sup>2</sup> (App. Br. <sup>3</sup>):

claims 1 through 3, 5, 6, 8, 13, and 14 under 35 U.S.C. § 102(b) as anticipated by Jones (US 5,822,878) (Ans. 4);

claim 4 under 35 U.S.C. § 103(a) as unpatentable over Jones in view of Aisenberg (US 6,038,786) (Ans. 8);

claims 7, 9, and 10 under 35 U.S.C. § 103(a) as unpatentable over Jones (Ans. 8);

claim 11 under 35 U.S.C. § 103(a) as unpatentable over Jones in view of Bahman (US 5,970,622) (Ans. 9); and

claim 12 under 35 U.S.C. § 103(a) as unpatentable over Jones in view of Chan (US 5,857,263) (Ans. 9).

The Examiner also advanced on appeal the ground of rejection of claims 1-14 under 35 U.S.C. § 112, second paragraph. Ans. 3-4. Office

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<sup>2</sup> The Examiner has withdrawn the ground of rejection of claims 1-14 under 35 U.S.C. § 112, first paragraph, written description requirement. Ans. 2. *See* Office Action 2.

<sup>3</sup> We considered the Appeal Brief filed January 20, 2010, the Examiner's Answer mailed March 16, 2010, and the Reply Brief filed May 17, 2010.

Action 4. Appellant does not request review of this ground of rejection in the Appeal Brief, but addresses the ground indirectly in the Appeal Brief as recognized by the Examiner. App. Br. 3-8; Ans. 9-13; *see also* Reply Br. 1-5.

## Opinion

### I.

There is no dispute that the claim 1 terms “movement means” and “control means” invoke the strictures of 35 U.S.C. § 112, sixth paragraph. Ans., e.g., 3-4 and 9-10; App. Br., e.g., 2-8; Reply Br., e.g., 1-2.<sup>4</sup> Thus, the threshold issue in this appeal is the interpretation of these terms which entails identifying the function specified for each of the terms in claim 1, and whether the Specification provides a description of the corresponding structure which performs that function. *See, e.g., Biomedino, LLC v. Waters Technologies Corp.*, 490 F.3d 946, 950 (Fed. Cir. 2007) (citing *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1210 (Fed. Cir. 2003)); *In re Donaldson Co., Inc.*, 16 F.3d 1189, 1195 (Fed. Cir. 1994) (*en banc*) (“[T]he PTO was required by statute to look to Schuler’s specification and construe the ‘means’ language recited in the last segment of claim 1 as limited to the corresponding structure in the specification and equivalents thereof.”).

### A.

The function specified for the claim 1 term “movement means” is “moving the diffuser over a wide range of angles in order to dry different

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<sup>4</sup> *See also* the Decision in Appeal 2007-3253 entered in this Application on September 27, 2007, by a different merits panel.

parts of the surface [of a user's body].” The function specified for the claim 1 term “control means” is “sending instructions to the movement means in order to control the movement of the movement means over the wide range of angles.”

We determine that the “movement means” and the “control means” are interrelated with respect to the function of “moving the diffuser over a wide range of angles [to dry different parts of the surface of a user’s body].” In considering the language “moving the diffuser over a wide range of angles,” we find that the Specification discloses that, as illustrated in representative Figure 1, “first movement means 2 allows dryer 1, in particular outer circumference 8 of the diffuser means 5, to be moved left, right, up or down,” wherein “first movement means 2 may comprise a pivoting mechanism 2a or the like;” that “second movement means 3 may also be incorporated,” wherein “second movement means 3 may also comprise a pivoting mechanism 3a” to position diffuser 5; and that “first and second movement means 2, 2a, and 3, 3a are operable to move the dryer 1 over a wide range of angles.” Spec. ¶¶ 0011-0013 and Fig. 1. We find that the Specification further discloses the language “wide range of angles” as ranges of degrees without specifying the reference point or direction of movement of the ranges. Spec. ¶ 0013; *see also* appealed claim 3. We find that the Specification discloses that “[w]ith this wide range of angles, the dryer 1 is capable of drying . . . a person as that person moves through a wide range of angles.” Spec. ¶ 0013. In this respect, the Specification discloses that “[i]n comparison, though some existing commercial hair dryers are capable of moving in a side-to-side or up and down direction, they

are not capable of moving over a wide range of angles, as is the dryer 1.”  
Spec. ¶ 0013.

We further find that the Specification discloses that “[t]hough nothing prevents a user from touching both movement means 2, 2a and 3, 3a, in one embodiment of the invention the movement of these means . . . is controlled without the need for such contact or access by a user.” Spec. ¶ 0014. In this respect, we find that the Specification further discloses control means 6, which “may comprise a removable or built-in remote control for controlling . . . the initiation, cessation and positioning of the movement means 2, 2a and 3, 3a” by sending instructions thereto which results in the movement of lower body 2b and/or upper body 3b of dryer 1 to move diffuser 5 to a new position. Spec. ¶ 0018.

Thus, in light of the disclosure in the Specification, we interpret the function of “moving the diffuser over a wide range of angles in order to dry different parts of the surface [of a users body],” to specify that the “movement means” must move a diffuser at least to some extent in each of left, right, up and down directions, which movements are controlled by instructions sent from the “control means.”

Accordingly, we interpret the language of claim 1 to require that the “movement means” has the function of moving the diffuser in a range of angles relative to the user’s body in at least left, right, up, and down movement, and the “control means” has the function of sending instructions to control the movement of the “movement means” in these respects.

B.

Considering now the structure corresponding which performs the

function of “moving the diffuser over a wide range of angles in order to dry different parts of the surface [of a users body],” specified for the claim 1 term “movement means”, we find that the Specification discloses that first movement means 2 can comprise at least pivoting mechanism 2a which can pivot lower body 2b of dryer 1 left, right, up, and down, and second movement means 3 can comprise at least pivoting means 3a which can pivot upper body 3b to position diffuser 5. Spec. ¶¶ 0011-0013 and Fig. 1. *See above* p. 4. *See also* App. Br. 2-5; Reply Br. 1-2. We find that one skilled in the art would infer that each of the pivoting mechanisms 2a, 3a illustrated in Figure 1 has two arms, wherein each arm is fixed at a pivot point at one end and connected at a pivoting joint at the other end to the other arm. This person would have found that each of the two pivot points of both pivoting mechanisms 2a, 3a are located on the same dryer part, that is, no pivot point is shown on lower body 2b and on upper body 3b. We find no disclosure in the Specification explaining how illustrated pivoting mechanisms 2a, 3a would function without a pivot point on lower body 2b and on upper body 3b, respectively. We further find no disclosure of other mechanical elements of movement means 2, 3 and of pivoting mechanisms 2a, 3a, which would produce left, right, up, and down movement with pivoting mechanisms 2a, 3a, and thus the left, right, up, and down movement of lower body 2b and upper body 3b, respectively. *See* Spec. ¶¶ 0011-0013.

In this respect, we find that the Specification discloses that a user can directly manipulate movement means 2, 2a and 3, 3a but does not disclose how the user would do so. Spec. ¶ 0014.

We find that while the Specification further discloses that movement

of movement means 2, 2a and 3, 3a can be controlled by instructions sent from control means 6, there is no disclosure in the Specification of mechanical elements associated with movement means 2, 2a and 3, 3a which would facilitate left, right, up, and down movement of lower body 2b and upper body 3b in response to instructions sent by control means 6. *See Spec.* ¶¶ 0014 and 0018. *See above* pp. 4-5. *See also* App. Br. 2 and 5-8; Reply Br. 2-3.

With respect to the structure corresponding to the function of “sending instructions to the movement means in order to control the movement of the movement means over the wide range of angles,” specified for the claim 1 term “control means,” we find no disclosure in the Specification of the electrical elements of the disclosed removable or built-in remote control means 6 for controlling the initiation, cessation and positioning of the movement means 2, 2a and 3, 3a by sending instructions thereto. *See Spec.* ¶¶ 0018-0020 and 0025, and Fig. 1. *See above* pp. 4-5. *See also* App. Br. 2 and 5-8; Reply Br. 2-3. We find that one skilled in the art would infer from Figure 1 that the arrows in the left, right, up, and down directions shown on control means 6 represent switches which would send instructions to control the left, right, up, and down movement of only one of pivoting mechanisms 2a and 3a and thus, with appropriate structure, the left, right, up, and down movement of only one of lower body 2b and upper body 3b of dryer 1. In this respect, we find no disclosure in the Specification of electrical elements for control means 6 which would permit control means 6 to send instructions to both pivoting mechanisms 2a and/or 3a to control the left, right, up, and down movement of either or both lower body 2b and upper body 3b. Thus,



we find that the Specification discloses that control means 6 can send instructions to manipulate movement means 2, 2a and 3, 3a, but does not disclose the structure which would enable control means 6 to do so.

C.

On this record, we find that the Specification does not disclose sufficient structure to one skilled in the art which would perform the functions specified for the claim 1 terms “movement means” and “control means” as we interpreted the specified functions above. In these respects, we considered the evidence in the Specification and Figure 1 in light of Appellant’s positions in the Briefs. App. Br. 2-8; Reply Br. 1-5. However, while Appellant’s arguments point out relevant passages of the Specification and the elements illustrated in Figure 1 for consideration, Appellant has not established that this disclosure provides corresponding structures which perform the specified functions to one skilled in the art. *See, e.g., Telcordia Technologies, Inc. v. Cisco Systems, Inc.*, 612 F.3d 1365, 1376 (Fed. Cir. 2010) (“For a means-plus-function claim to satisfy the definiteness requirement, the written description must clearly link or associate structure to the claimed function . . . [when] considered from the perspective of a person skilled in the art.”) (citing *Biomedino*, 490 F.3d at 950; *Intel Corp. v. VIA Techs., Inc.*, 319 F.3d 1357, 1365-66 (Fed. Cir. 2003)); *Med. Instrumentation*, 344 F.3d at 1212 (“It is important to determine whether one of skill in the art would understand the specification itself to disclose the structure, not simply whether that person would be capable of implementing that structure.”); *Atmel Corp v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1382 (Fed. Cir. 1999) (“[I]n order for a claim to meet the particularity

requirement of [§ 112,] ¶ 2, the corresponding structure(s) of a means-plus-function limitation must be disclosed in the written description in such a manner that one skilled in the art will know and understand what structure corresponds to the means limitation.”).

## II.

On this record, we agree with the Examiner that the “mean-plus-function” limitations specified by claim 1 terms “movement means” and “control means” are not supported by an adequate disclosure in the Specification and representative Figure 1 showing what is meant by the limitations. Ans. 3-4. Thus, we determine that, as the Examiner holds and contrary to Appellant’s position, claim 1 and the claims dependent thereon are indefinite under 35 U.S.C. § 112, second paragraph. Ans. 3-4; App. Br. 2-8; Reply Br. 1-5. *See, e.g., Donaldson*, 16 F.3d at 1195 (“If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.”); *see also, e.g., Biomedino*, 490 F.3d at 950 (“If there is no structure in the specification corresponding to the means-plus-function limitation in the claims, the claim will be found invalid as indefinite.”). Accordingly, we affirm the ground of rejection of claims 1-14 under 35 U.S.C. § 112, second paragraph.

## III.

Consequentially, independent claim 1 and dependent claims 2-14 are indefinite to the extent that it is impossible to ascertain the propriety of the Examiner’s grounds of rejection thereof under 35 U.S.C. §§ 102(b) and 103(a) over the applied prior art without undue speculation. *See above* p. 2.

Thus, we reverse all of the grounds of rejection under §§ 102(b) and 103(a) pro forma. *See In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970); *In re Steele*, 305 F.2d 859, 862-63 (CCPA 1962).

IV.

We have affirmed the ground of rejection of claim 1-14 under 35 U.S.C. § 112, second paragraph, and have reversed the grounds of rejection of claims 1-14 under 35 U.S.C. §§ 102(b) and 103(a).

Accordingly, the Primary Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

kmm

HARNESS, DICKY & PIERCE, P.L.C.  
P.O. BOX 8910  
RESTON, VA 20195